

c.) Remarks

Claims 1, 6, 21 and 22 have been amended in order to recite the present invention with the specificity required by statute by changing “capable of differentiating” to --differentiates--. Additionally, claims 28, 39, 51, 55, 59, 87 and 89 are amended for better idiomatic usage (claim 25) or conformity with accepted U.S. practice by changing “represented by” to --of--.

The Examiner has discussed the claim for priority at pages 2-6 of the Office Action. Therein, the Examiner notes the claim to priority made in the August 8, 2003 paper (and the original Declaration) was under 35 U.S.C. 119 only. The Examiner states there was no priority claim in the application data sheet and “neither the PCT application nor its translation have been provided.” The Examiner therefore requires reference thereto be made in compliance with 37 C.F.R. §1.78(a) with submission of a grantable petition to accept an unintentionally delayed benefit claim. Applicants have, accordingly, made a suitable amendment to the specification and attach hereto a suitable Petition.

Claim 25 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As noted, such correction is attended to above by changing “comprising” to --which is-- as kindly suggested by the Examiner.

Claims 1, 6-19, 21-28, 38, 39, 41, 43 and 44 stand rejected under 35 U.S.C. §102(a) as being anticipated by Makino (*J. Clin. Invest.*, Vol. 103 (1999) 697-705) and Shi (*Blood*, Vol. 92 (1998) 362-367). The Examiner’s bases for this rejection are set forth at pages 7-9 of the Office Action. In this regard, the claims are amended to recite “differentiates into more than one cell, one of which is a cardiomyocyte” as kindly

suggested by the Examiner in the November 16, 2005 Office Action at page 5, lines 15-17 (“Shi et al and Makino et al anticipate the claimed cell because the claims fail to differentiate the claimed cell”). Accordingly, the cells encompassed by the claims now distinguishes the prior art in conformity with the Examiner’s analysis at page 8, lines 9-12.

That is, Makino discloses that a cardiomyogenic cell line was isolated from murine bone marrow stromal cells; however, Makino neither discloses nor suggests that the CD117-positive and CD140-positive adult stem cell obtained from adult bone marrow differentiates into more than one cell, one of which is a cardiomyocytes and plainly, such is not inherent to the population of murine bone marrow stromal cells. Similarly, Shi discloses that bone marrow-derived cells differentiate into endothelial cells; however, Shi neither discloses nor suggests that the CD117-positive and CD140-positive adult stem cells obtained from adult bone marrow differentiate into a cardiomyocyte. This too is not inherent to the population of bone marrow cells. Accordingly, the adult stem cell in amended claim 1 is not disclosed or suggested in these references.

In view of the above amendments and remarks, Applicants submit that all of the Examiner’s concerns are now overcome and the claims are now in allowable condition. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Claims 1, 6, 9-19, 21-28, 38, 39, 41, 43, 44, 47-63 and 78-91 remain presented for continued prosecution.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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